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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,978	04/16/2004	Donald E. Weder	8404.041	8874

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EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/825,978

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

3644



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/16/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

Claims 26 are objected to because of the following informalities:

The second instance of instant claim-26 should be labeled as "27".

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9-12, 16-19 and 23-25 are rejected under 35 U.S.C. 102(b),

as being anticipated by Gilbert (US 5,388,695) 1995.

Regarding **independent claim-1**:

Gilbert teaches a brightly printed trapezoidal container (Title), and further teaches (Abstract) the container may also be specifically dimensioned to sheath a flower pot, (read as: a preformed flower pot cover sized and configured, as cited in the instant claim).

Gilbert further teaches providing a lower printed portion (read as: the preformed base having a decorative pattern, as cited) provided with a bright pattern, or images of bright leaves or flowers, or both, provided by different colors of ink, or different thicknesses of the same ink (column-7, lines 41-49).

The teaching of Gilbert whereby different thicknesses of the same ink are utilized, is read as; two dimensional decorative pattern formed by at least one ink applied thereto so as to form highlighted and shaded areas which provide the decorative pattern with a visual perception of three dimensionality. The method of Gilbert is capable of the decorative rendering as cited in the instant claim.

Regarding **independent claim-9**:

The discussion above regarding claim-1 is relied upon.

Gilbert also teaches a generally frustoconical bag at least partially filled with a material such as soil which may have a live plant growing therein (Abstract), which is read as; a flower pot, as cited in the instant claim.

Art Unit: 3644

Regarding **independent claim-16**:

The discussion above regarding claim-9 is relied upon.

A plant package as cited, is readable on the bag of Gilbert as discussed above in the rejection of claim-9.

Regarding **independent claim-23**:

The discussions above regarding the independent claims are relied upon.

Gilbert depicts in Figures 2 and 3, flower pot covers, having portions above the slitted features (33s) and (52) which are readable on a skirt portion as cited, and Figure-3 depicts decorative ornamentation thereon the skirt portion.

Regarding repeating dependent **claims 2, 10 and 17**:

The discussions above are relied upon.

A skirt portion is evident and readable on the depictions of Gilbert (see the preceding discussion above).

Regarding repeating dependent **claims 4 and 25**:

The discussions above regarding the independent claims are relied upon.

The covers of Gilbert are capable of the disposition cited in the instant claims, and an ornamental skirt portion is discussed above in the rejection of independent claim-23.

Art Unit: 3644

Regarding repeating dependent **claims 5,12, 19 and 24**:

The discussions above regarding the independent claims are relied upon.

Gilbert teaches a two panel construction (Abstract).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8, 13-15, 20-22 and 26-27 are rejected under 35 U.S.C. 103(a),
as being unpatentable over Gilbert (US 5,388,695) 1995
in view of Weder (US 5,029,412) 1991.

Regarding dependent **claims 6, 13, 20 and 26**:

The discussions above regarding the independent claims are relied upon.

Gilbert is silent as to a plurality of overlapping folds in the base portion as cited.

Weder '412 teaches a flower pot or flower pot cover with a pleated base and skirt (Title),
and elaborates on the formation of a decorative pattern as printed, embossed or
otherwise disposed on the outer surface of the pot or cover (column-3, lines 53-66).

Art Unit: 3644

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have substituted the pleated cover of Weder '412 for the unpleated trapezoidal cover of Gilbert, as further such modification is merely an alternate equivalent decorative and skirted covering means performing the same intended function of disposing a pot or floral grouping into a decorative wrapper for aesthetic appeal.

Regarding dependent **claims 7, 14, 21 and 27**:

The discussions above regarding the independent claims are relied upon.

Gilbert as modified by Weder provides for partially bonded overlapping folds as cited, (see Weder '412, claim-1).

Regarding dependent **claims 8, 15 and 22**:

The discussions above regarding the independent claims and the preceding claims rejection are relied upon.

Gilbert as modified by Weder (see Figures) provides for randomly positioned and connected folds as cited, the cover of Gilbert as modified is also capable of being flattened and unflattened as cited in the instant claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6 of U.S. Patent No. 6,574,918 in view of U.S. Patent No. 5,029,412.

The independent claims 1, 9 and 16 are encompassed by the conflicting '918 independent claim-1, instant independent claim-23 is encompassed by conflicting '918 claims 1 and 6.

Repeating instant dependent claim groups 2, 10, 17 and 3, 11, 18 and 4, 25 and 5, 12, 19, 24 are encompassed by conflicting '918 claims 1 and 6.

Claims 1-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 4-6 of U.S. Patent No. 6,269,590.

Art Unit: 3644

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are encompassed by the conflicting '590 claims.

Claims 1-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,295,761. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are encompassed by the conflicting '761 claims.

Terminal Disclaimer

The terminal disclaimer filed on 4/16/04 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent Numbers 6,269,590, 6,295,761, 6,442,894 and 6,519,897 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Art Unit: 3644

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on M-Tu., Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Francis T. Palo

Francis T. Palo
Examiner
Art Unit 3644
